CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~628~~ 41

LESLIE T. ALWARD, PETITIONER,

vs.

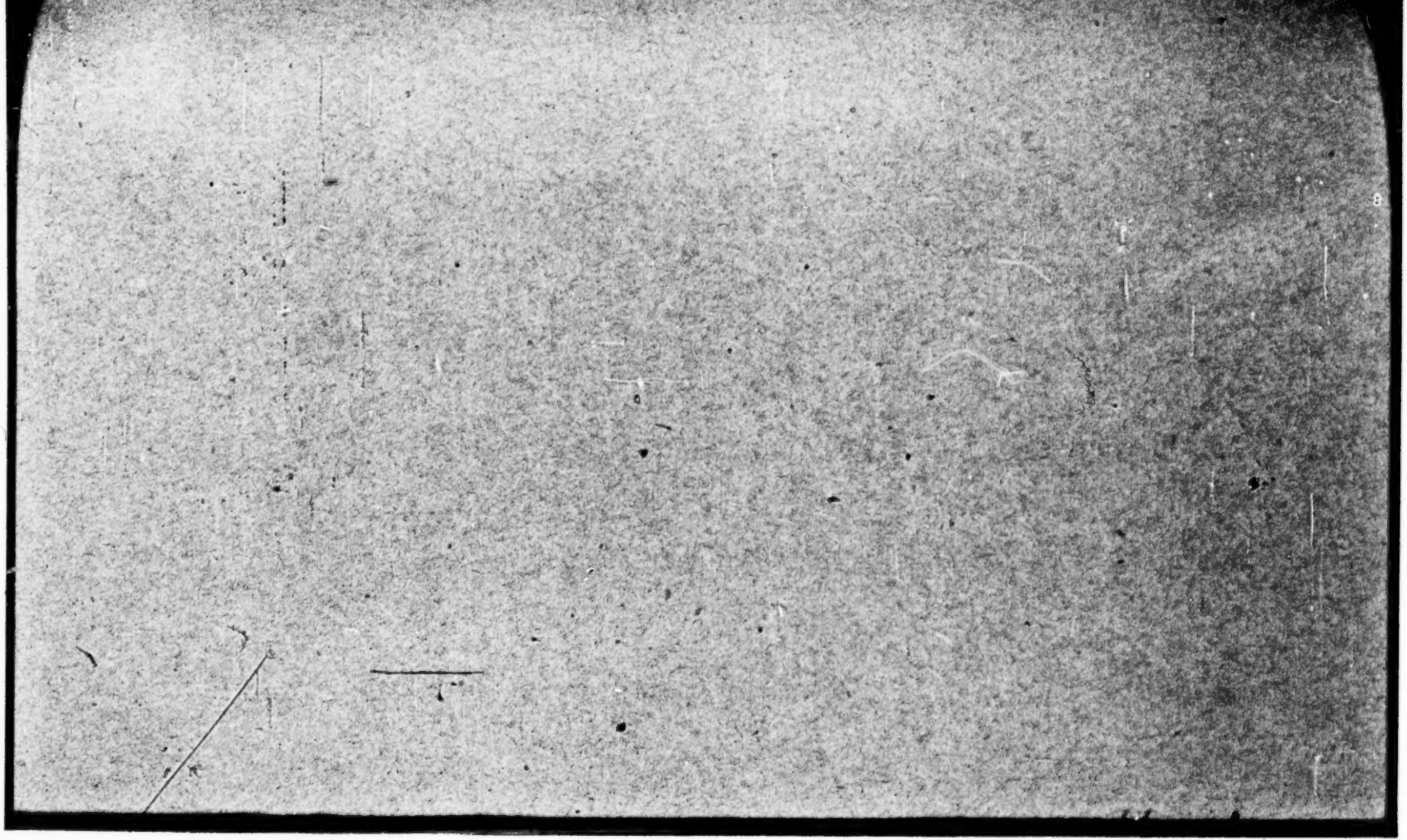
C. G. JOHNSON, TREASURER OF THE STATE OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED FEBRUARY 4, 1930

CERTIORARI GRANTED MARCH 17, 1930

(34,759)



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[fol. 1] **IN SUPERIOR COURT OF SACRAMENTO COUNTY**

No. 38864

LESLIE T. ALWARD, Plaintiff,

vs.

C. G. JOHNSON, Treasurer of the State of California, Defendant

THIRD AMENDED COMPLAINT—Filed May 25, 1928

Plaintiff complains of defendant above named, and for cause of action, alleges:

I

That at all times herein mentioned, C. G. Johnson was and is the duly elected, qualified and acting Treasurer of the State of California, holding office under and by virtue of the laws thereof.

II

That Leslie T. Alward, the plaintiff herein, at all the times mentioned herein has been, and now is, engaged in the business of operating an automotive stage line known as the Redding-Weaverville Stage Line, between Redding California and Big Bar California, by virtue of a contract entered into with the Post Office Department of the United [fol. 2] States Government, and at all times has been, and now is, carrying United States Mails and Parcels Post on said stage line. That in carrying said United States mail, the plaintiff herein employs motor vehicles.

III

That the State Board of Equalization of the State of California, under the provisions of Article XIII, Section 15, of the Constitution of the State of California, and Chap-

ter 19, Statutes 1927 of the State of California, has required the said Leslie T. Alward to file with the State Board of Equalization a report, as provided for in the said Acts, showing the gross receipts derived by the said Leslie T. Alward from the operation of the said stage line for the year 1926, including receipts for the carriage of United States mails and parcels post; that the gross income of the plaintiff herein was in the following amounts:

Revenue derived from the carriage of passengers	$8,803.31
Revenue derived from the carriage of freight	9,806.43
Revenue derived from the carriage of United States mail and parcels post	42,286.73

That thereupon, and based upon the foregoing receipts, the said State Board of Equalization, assessed the plaintiff herein, under the aforesaid acts, the following sums as a tax to be paid by the plaintiff for the year 1927:

On the gross income derived from passengers	$374.14
[fol. 3] On the gross income derived from U. S. mail	2,114.32
On the gross income derived from Freight	490.32

That plaintiff herein has paid the sum of One Thousand Four Hundred Eighty-nine and 39/100 ($1,489.39) Dollars, being one-half, or the first installment of the said tax. Said payment was made under protest, and was paid to prevent being harrassed, annoyed and prosecuted under the said act; and to prevent the property of the plaintiff from being seized and taken away.

V

That in earning the revenue above set forth, plaintiff has employed the following automotive property, and no other:

One three and one-half ton Garford truck, three two and one-half ton Garford trucks, three seven-passenger Paige automobiles, one seven-passenger Paige automobile, two one and one-quarter ton Reo Speed Wagons, one one and one-quarter Garford Speed Wagon, one one-half ton trailer,

one snow plow, one oil tank and pump, one garage and the machinery and tools in connection therewith.

That in earning said revenue, plaintiff has employed the following equipment which is not automotive:

Fourteen horses, twelve double sets of harness, five two-ton freight wagons, four mail wagons, one bob sled, equipment for one office, consisting principally of one adding machine, one typewriter, one desk and office chairs, two parcels of real estate, one situated in Shasta County and one situated in Trinity County.

That the actual market value of all the above mentioned property does not exceed the sum of Fifteen Thousand ($15,000) Dollars.

[fol. 4]

VI

That the said property is devoted chiefly to the carrying of United States mails and parcels post, and has no value in excess of its actual market value by reason of any franchise or intangible value connected therewith or by reason of being part of any system capable of earning more than other property of like kind, character and value, and that the plaintiff's ability to earn more with this property than any other property of like kind and character and earn more than any other person could earn with the same property is only and solely by reason of the fact that the plaintiff has a contract with the United States Government for the carrying of United States mail and parcels post. That without the said contract with the United States Government, the said stage line could not be operated profitably, as the income from all sources, other than the revenue derived from the carriage of United States mail and parcels post is not sufficient to pay the expenses of maintaining and operating the said stage line.

VII

That the assessment made by the State Board of Equalization is confiscatory, arbitrary and excessive, and does not take into consideration the actual value of the afore-

said property, either as a stage line, or otherwise; and that the State Board of Equalization in fact, in fixing the valuation on the said property considered no other elements of [fol. 5] value with reference to the said property, except its gross earning as aforesaid. That the tax rate on property generally, taxed on the ad valorem basis in the counties in which this property is situated and at the time the said tax was levied, did not exceed the rate of three per cent (3%) per One Hundred Dollars ($100.00); and that prior to the adoption of Section 15, Article XIII of the Constitution, and under the ad valorem method of valuing property for taxation the plaintiff never paid in excess of Three Hundred Fifty Dollars ($350.00) per annum as a tax on all of the aforesaid property. That the replacement cost of all of the property used by the plaintiff in complying with the terms of the said contract with the United States Government does not exceed the sum of Fifteen Thousand Dollars ($15,000.00); and that taxed on the ad valorem basis the aforesaid property would have to be valued at Ninety-nine Thousand Four Hundred Sixty-two and 73/100 Dollars ($99,462.73), in order to arrive at the property tax assessed the plaintiff herein.

That in carrying the United States mail and parcels post the plaintiff herein is acting under a contract with the Post Office Department of the United States Government and for this purpose is an agency of the United States Government; that the income derived by the plaintiff from the carriage of United States mail and parcel post is not subject to a tax by the State of California, and that the said tax under the aforesaid acts insofar as it is based upon the [fol. 6] revenue derived by this plaintiff from the carrying of United States mail and Parcel Post has been wrongfully and unlawfully assessed to this plaintiff and the first installment thereof in the sum of One Thousand Fifty-seven and 16/100 Dollars ($1,057.16) has been wrongfully and unlawfully collected from this plaintiff and should be repaid to this plaintiff, and this plaintiff should be relieved from any other or further payment on account of any tax based upon the plaintiff's receipts from the carriage of United States mail and Parcel Post.

Wherefore the plaintiff prays judgment agains- the said defendant in the sum of One Thousand Fifty-seven and

16/100 Dollars ($1,057.16), for the costs of suit herein incurred and for such other and further relief as may be necessary in the premises.

S. G. Blood, Simeon E. Sheffey, Attorneys for Plaintiff.

[fol. 7] *Duly sworn to by S. G. Blood. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 8] IN SUPERIOR COURT OF SACRAMENTO COUNTY

DEMURRER TO THIRD AMENDED COMPLAINT—Filed June 1, 1928

Now comes the defendant named in the above entitled action and demurring to the third amended complaint herein filed by the above named plaintiff, alleges, as grounds of demurrer, that plaintiff's third amended complaint does not states facts sufficient to constitute a cause of action against said defendant or against the State of California.

Wherefore, defendant prays that plaintiff take nothing by his third amended complaint and that defendant have judgment for his costs of suit incurred herein.

U. S. Webb, Attorney General of the State of California; Frank L. Guerena, Deputy Attorney General, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 9] IN SUPERIOR COURT OF SACRAMENTO COUNTY

Decree entered Aug. 30, 1928, at 9:50 o'clock A. M., Dept. 2.

JUDGMENT—Filed Aug. 29, 1928

The plaintiff having filed in the above entitled matter his Third Amended Complaint, and the defendant above named having filed herein his Demurrer to said Third Amended Complaint, said Demurrer to said Third Amend-

ed Complaint having been regularly submitted to this Court by stipulation of the parties, and this Court being fully advised in the premises, and having sustained the demurrer to said Third Amended Complaint, without leave to amend,

Now, therefore, it is

Ordered, adjudged, and decreed that plaintiff take nothing by his said action, and that defendant herein recover from plaintiff his costs of suit herein incurred.

Peter J. Shields, Judge of the Superior Court.

Attest: Harry W. Hall, Clerk; by W. Hickey, Deputy Clerk.

[fol. 10] In Superior Court of Sacramento County

Notice of Appeal—Filed Sept. 7, 1928

To the clerk of the above-entitled court and to C. G. Johnson, Treasurer of the State of California, and to U. S. Webb, Attorney General of the State of California:

You and each of you will please take notice that Leslie T. Alward plaintiff in the said action, hereby appeals to the Supreme Court of the State of California, from the judgment rendered in the above action against said plaintiff that he take nothing and that defendant herein recover from plaintiff his costs of suit herein incurred, which said judgment was entered in the above-entitled Court on August 30, 1928, and said plaintiff appeals from the whole of said judgment.

Sherman Blood, Simeon E. Sheffey, Attorneys for Plaintiff.

Dated September 6th, 1928.

[File endorsement omitted.]

[fol. 11] Clerk's certificate to transcript omitted in printing.

[fol. 12] Judge's certificate to foregoing transcript omitted in printing.

[fol. 13] IN SUPREME COURT OF CALIFORNIA. IN BANK

Sac. No. 4261

LESLIE T. ALWARD, Plaintiff and Appellant,

vs.

C. G. JOHNSON, Treasurer of the State of California, Defendant and Respondent

Appeal by plaintiff from a judgment of the Superior Court of Sacramento County, Peter J. Shields, Judge, in an action for taxes paid under protest. Affirmed.

For Appellant: Simeon E. Sheffey, Sherman Blood.

For Respondent: U. S. Webb, Attorney-General; Frank L. Guerena, Deputy Attorney-General.

OPINION—Filed October 7, 1929

Plaintiff was engaged in the business of operating an automotive stage line over the public highways between Redding and Big Bear, California, carrying passengers, freight, the United States mail and parcels post. He was, therefore, subject to a tax on gross receipts from the carriage of persons and property, in lieu of all other taxes and licenses. (Const., art. XIII, sec. 15.) He filed with the State Board of Equalization a statement showing gross receipts from the operation of his transportation line for the year 1926 amounting to $60,986.47. On the basis of that statement, and pursuant to the Constitution, supra, the board levied a tax of $2,978.78 for the year 1927. Appellant paid the first instalment under protest, and brought this action to recover $1,057.16, the portion of the tax assessed against the revenue derived from the carriage of the United States mails and parcels post. A demurrer inter-
[fol. 14] posed to his third amended complaint was sustained without leave to amend, and judgment was entered accordingly, from which the plaintiff has appealed.

Appellant attempts to raise questions concerning the method of taxation adopted by the people of the state in 1910, by which the system of state and local taxation was

separated, which were long ago settled against his contentions. He first asserts that the actual market value of the various units of property used in the operation of his stage line is not more than $15,000, and that prior to the adoption of section 15, supra, the ad valorem tax on his property never exceeded $350 per annum. He therefore claims that, as applied to his property, the prescribed method of taxation results in an arbitrary, excessive and confiscatory tax, violative of the Fourteenth Amendment to the Federal Constitution. He further contends that, inasmuch as the tax is not based upon the true valuation of his property, it ceases to be a tax on property and becomes a direct levy upon appellant's contract to carry mails for the United States government, and is, therefore, a tax on a federal agency.

(1) The question as to whether or not the taxes levied for state purposes by section 14 of article XIII, upon the gross receipts of the utilities there enumerated, are taxes upon property has several times been considered by this court, and in each instance it has been declared to be essentially a property tax. (Pullman v. Richardson, 185 Cal. 484, 487, 197 Pac. 346 affirmed in 261 U. S. 330, 339, and [fol. 15] cases there cited.)

(2) The tax required by section 15 of article XIII of the Constitution on the gross receipts of appellant's business is the identical kind of a tax required by section 14, and is, like the other, essentially a property tax. It is neither arbitrary, excessive or confiscatory to the extent of rendering it violative of the due process clause of the fourteenth amendment to the federal Constitution.

(3) The second main contention of appellant is that he carries the United States mails and parcels post under a contract with the Postoffice Department of the United States Government, and for that purpose is an agency of the government, and, as such, immune from state taxation. He cites cases in which the courts have denied the state the right to collect taxes upon transactions in which the federal government is directly engaged (e. g., Panhandle Oil Co. v. Mississippi, 277 U. S. 218, 48 Sup. Ct. Rep. 451.) But there is a very material difference between such transactions and

one in which a private citizen, whose only relation to the government is that of contract, is under obligation to furnish service in accordance with that contract. "Mere contracts between private corporations and the United States do not necessarily render the former essential government agencies and confer freedom from state control." (Metcalf and Eddy v. Mitchell, 269 U. S. 514.) In that case, involving a tax on the income of consulting engineers in state service, the court, speaking through Mr. Justice Stone, said: "* * * not every person who uses his property [fol. 16] or derives a profit, in his dealings with the government, may clothe himself with immunity from taxation on the theory that either he or his property is an instrumentality of government within the meaning of the rule (citing cases).

"'It seems to us extravagant to say that an independent private corporation for gain created by a State, is exempt from state taxation either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time.'"

In Railroad Co. v. Peniston, 18 Wall. (85 U. S.) 5, it was claimed that the state of Nebraska had illegally imposed a tax upon the property of the railroad company, the contention being that the property was exempt from state taxation by virtue of the incorporation of the company by the United States as a means for the performance of certain public duties of the government, enjoined and authorized by the Constitution. In considering the contention, the court said (p. 33):

"It may, therefore, be considered as settled that no constitutional implication prohibit a State tax upon the property of an agent of the government merely because it is the property of such an agent. A contrary doctrine would greatly embarrass the States in the collection of their necessary revenue without any corresponding advantage to the United States. A very large proportion of the property within the States is employed in execution of the powers of the government. It belongs to governmental agents, and it [fol. 17] is not only used, but is is necessary for their

agencies. United States mails, troops, and munitions of war are carried upon almost every railroad. Telegraph lines are employed in the national service * * * They are the property of natural persons, or of corporations, who are instruments or agents of the general government, and they are the hands of by which the objects of the government are attained. Were they exempt from liability to contribute to the revenue of the States it is manifest that State governments would be paralyzed."

(4) In his closing brief, appellant for the first time, raises the point that section 15 of article XIII, supra, applies only to common carriers. He contends that the general definition of a common carrier, i. e., "one who undertakes, for hire or reward, to transport the goods of such as choose to employ him from place to place" (10 Cor. Jur. 39), is not applicable to one engaged in carrying the United States mails. In his third amended complaint filed in this action appellant alleged that he was "engaged in the business of operating an automotive stage line known as the Redding-Weaverville Stage Line, between Redding, California, and Big Bar, California * * *," and that the property used in the operation of the line was "devoted chiefly to the carrying of United States mails and parcels post." An examination of his report filed with the board of equalization shows that of the $60,986.47 reported as earned dur- [fol. 18] ing the year 1926, $18,609.74 was revenue derived from the carriage of passengers and freight. There is nothing in appellant's complaint, or in the briefs filed in his behalf, which would indicate that he did not undertake, for hire or reward, to transport from place to place passengers and the goods of such as chose to employ him. His stage line was operated over the public highways, between fixed termini, and over a regular route. It is true his property was largely employed in the service of the United States; but that does not alter the fact that it was also devoted to public service, and, as was said in Metcalf and Eddy v. Mitchell, supra, it would seem extravagant to say "that an independent private corporation for gain created by a State, is exempt from state taxation * * * in * * * its property, because it is employed by the United States, even if the work for which it is employed is impor-

tant and takes much of its time." While appellant's complaint is directed only to the portion of the tax based on the receipts from the carriage of the mails, the tax, as before pointed out, is a tax on the operative property "used in the business of transportation of persons or property," without distinction as to the nature of the property transported.

The judgment is affirmed.

Waste, C. J.

We concur: Curtis, J.; Preston, J.; Richards, J.; Seawell, J.; Langdon, J.

[File endorsement omitted.]

[fols. 19-21] Petition for rehearing, covering three pages, filed October 26, 1929, omitted from this print. It was denied and nothing more by order November 4, 1929.

[fols. 22 & 23] In Supreme Court of California

Order Denying Rehearing—Filed Nov. 4, 1929

By the Court:

The petition for a rehearing herein is denied. (All concur.)

Waste, Chief Justice.

Dated Nov. 4, 1929.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

[Seal Supreme Court of California]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 17, 1930

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2992)